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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,705	01/16/2002	Stephen F. Gass	SDT 321	3366
27630	7590	12/14/2004	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			ALIE, GHASSEM	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/052,705	<b>Applicant(s)</b> GASS ET AL. <i>ad</i>	
	<b>Examiner</b> Ghassem Alie	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) 6-17 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1, 2 and 5 is/are rejected.  
7) ☒ Claim(s) 2 and 3 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 16 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/17/03-08/18/04</u> . | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Applicant's election of Invention I (claims 1-14 and 17) and Group I (claims 2-5) on 08/20/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 7-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim.

***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a

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terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 1, 15, and 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of copending Application No. 09/929235. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are all drawn towards a table saw having a blade, an adjustment mechanism, a brake mechanism, and a brake positioning system used to position the brake in an operable position relative to the blade as the adjustment mechanism adjusts the position of the blade. The brake positioning system inherently has a positioning member, which is configured to maintain the brake mechanism adjacent, the blade.

#### *Claim Objections*

5. Claim 2 is objected to because of the following informalities: "the positioning member is elongate" should be --the positioning member is elongated--. See claim 2, line 2. Appropriate correction is required.

#### *Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Tannewitz (1,811,066). Regarding claim 1, Tannewitz teaches a frame 1 including a table 2 defining a

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work surface and a rotatable blade 5 coupled to the frame 1 and extendable up through the work surface. Tannewitz also teaches an adjustment mechanism 3, 19 to selectively raise and lower the blade 5 relative to the table and a brake mechanism configured to engage and stop the blade 5. In addition, the adjustment mechanism 19 for tilting the blade, as shown in Fig. 2, also can be considered as the adjustment mechanism, which lowers and raises the blade. Tannewitz also teaches a brake positioning system configured to adjust the position of the brake mechanism to maintain the brake mechanism in an operative position relative to the blade 5 as the blade is raised and lowered. The blade positioning system is defined by the arms 9, 11, lever 8, and handset 10 and adjusts the position of the brake mechanism relative to the blade 5 as the blade is raised and lowered by the adjustment mechanism. Tannewitz also teaches that the brake positioning system includes a positioning member 8, 11 configured to maintain the brake mechanism adjacent the blade 5. See Figs. 1-4 and page 1, lines 36-90 in Tannewitz.

Regarding claim 2, Tannewitz also teaches that the blade 5 is mounted to an arbor 6 and where the positioning member 8, 11 is elongated with one end mounted to the arbor 6 and the other end coupled to the brake mechanism. One end of the positioning member is mounted to the shaft 3 and the shaft 3 is engaged with the slide 27, screw 29, and the lug 30 of the saw frame, which is connected to the arbor. Therefore, one end of the positioning member 8, 11 is indirectly mounted to the arbor.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tannewitz in view of Lokey (3,785,230). Regarding claim 5, Tannewitz teaches everything noted above including that the brake positioning system is configured to move the brake around the blade when the blade is raised and lowered. See Fig. 1-3 and page 1, lines 34-90 in Tannewitz. Tannewitz does not teach that the brake positioning system is configured to move around the perimeter of the blade. However, the use of brake positioning system to position a blade around the perimeter of the blade is well known in the art such as taught by Lokey. Lokey teaches a brake positioning system that positions a brake 125 around the perimeter of a blade 113. See Fig. 7 in Lokey. It would have been obvious to a person of ordinary skill in the art at the time of invention to use Tannewitz' brake positioning system to position the brake mechanism around the perimeter of the blade as taught by Lokey, since Tannewitz's brake mechanism and Lokey's brake mechanism function the same and both stop the blade from rotating. In addition, it would have been obvious to a person ordinary skill in the art at the time of invention to extend the arm 11 of Tannewitz brake mechanism up to perimeter of the blade in order to engage the brake rubber block with the cutting edge of the blade as taught by Lokey.

#### ***Allowable Subject Matter***

10. Claims 3 and 4 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the

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indication of allowable subject matter: the prior art of record does not teach that the positioning member is configured to pivot around the arbor as set forth in claim 3.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Turczyn et al. (5,086,890), Tsune (5,974,927), Janbbari (6,430,007), Vuichard (2,984,268), Mastriforte (2,758,615), Runyan (1,582,483), Collins (2,121,069), and Faig (3,994,192) teach a saw having a braking mechanism.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (571) 272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

GA/ga

December 8, 2004

  
BOYER ASHLEY  
PRIMARY EXAMINER